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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)	No. CR 04 0331 PJH
)	
v.)	INFORMATION
)	
BAYER AG,)	VIOLATION:
)	Title 15, United States Code,
Defendant.)	Section 1 (Price Fixing)
)	San Francisco Venue

The United States of America, acting through its attorneys, charges:

I.

DESCRIPTION OF THE OFFENSE

1. BAYER AG is made a defendant on the charge stated below.
2. Beginning on or about May 14, 2002 and continuing until on or about December 31, 2002, defendant and co-conspirators participated in a combination and conspiracy to suppress and eliminate competition by increasing and maintaining the price of acrylonitrile-butadiene rubber ("NBR") sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
3. The charged combination and conspiracy consisted of a continuing agreement,

1 understanding, and concert of action among the defendant and co-conspirators, the substantial
2 term of which was to suppress and eliminate competition by increasing and maintaining the
3 price of NBR in the United States and elsewhere.

4 4. For the purpose of forming and carrying out the charged combination and
5 conspiracy, the defendant and co-conspirators did those things that they combined and
6 conspired to do, including, among other things:

- 7 (a) participating in conversations and meetings to discuss prices of NBR to be sold
8 in the United States and elsewhere;
- 9 (b) agreeing, during those conversations and meetings, to raise and maintain prices
10 of NBR to be sold in the United States and elsewhere; and
- 11 (c) issuing price announcements and price quotations in accordance with the
12 agreements reached.

13 II.

14 DEFENDANT AND CO-CONSPIRATORS

15 5. The defendant is an entity organized and existing under the laws of Germany,
16 with its principal place of business in Leverkusen, Germany. During the period covered by this
17 Information, the defendant and its subsidiaries sold NBR in the United States and elsewhere.

18 6. Various corporations and individuals, not made defendants in this Information,
19 participated as co-conspirators in the offense charged herein and performed acts and made
20 statements in furtherance of it.

21 7. Whenever in this Information reference is made to any act, deed, or transaction
22 of any corporation, the allegation means that the corporation engaged in the act, deed, or
23 transaction by or through its officers, directors, employees, agents, or other representatives
24 while they were actively engaged in the management, direction, control, or transaction of its
25 business or affairs.

26 III.

27 TRADE AND COMMERCE

28 8. NBR is used to manufacture, among other things, hoses, belting, cable, o-rings,

1 seals, adhesives, and sealants.

2 9. During the period covered by this Information, the defendant and co-conspirators
3 manufactured, sold, and distributed NBR in a continuous and uninterrupted flow of interstate
4 and foreign trade and commerce to customers located in states or countries other than the states
5 or countries in which the defendant and co-conspirators produced NBR.

6 10. The business activities of the defendant and co-conspirators that are the subject
7 of this Information were within the flow of, and substantially affected, interstate trade and
8 commerce.

9 IV.

10 JURISDICTION

11 11. The combination and conspiracy charged in this Information was carried out, in
12 part, in the United States within the five years preceding the filing of this Information.

13 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

14 Dated: October 13, 2004

15
16 /s/
17 R. Hewitt Pate
Assistant Attorney General

/s/
Phillip H. Warren
Chief, San Francisco Office

18
19 /s/
20 Scott D. Hammond
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United States Department of Justice
21 Antitrust Division

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